

## PROBLEMATICS CULTURE OF CHILD MARRIAGE IN INDRAMAYU IN A LEGAL AND CULTURAL PRESPECTIVE

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### **Abstract**

*The problem of marriage is a very common problem for the world community, especially the people of Indonesia, one of the problems is child marriage. the highest likelihood of child marriage is in Indramayu Regency. The purpose of this study is to analyze the practice of child marriage that occurs in Indramayu, the reasons for child marriage. The method of approach taken by the author is to use a normative juridical approach. Based on the research findings there are obstacles that cause child marriage culture in Indramayu as follows: There are religious views that allow underage marriages, There are differences in legal perspectives between traditional and contemporary fiqh, aspects of tradition and culture in the local area Modern communication technologies such as mobile phones encourage young marriages. The implication of this research is to socialize Law Number 16 Year 2019 regarding marriages regarding the marriage age limit up to 18 years for men and women as well as government cooperation with community leaders, religious leaders and the Indonesian Women's Coalition to eradicate child marriage in various regions.*

**Keyword:** Child Marriage, Indramayu, Law.

### **A. INTRODUCTION**

In life on this earth, God Almighty created His creatures in pairs so that they lived side by side, loved one another and loved one another to carry on their offspring<sup>1</sup>. Marriage is a sacred bond between a man and woman that validates a person's legal status as husband and wife. This causes sexual halalan with the aim of forming a peaceful, loving, and caring family for each other. Marriage is a very important event in a person's life because it can affect the person's status.<sup>2</sup>

Besides marriage as a family and relative affair, the gathering of two

1 Sayuti Thalib, *Hukum Kekeluargaan Indonesia*, cet.5, UI-Press, Jakarta, 1986, page. 37

2 Hazar Kusmayanti, Keabsahan Perkawinan Kuli Kawin Di Pamanukan Hilir Kabupaten Subang Dihubungkan Dengan UU No. 1 Tahun 1974 Tentang Perkawinan dan Hukum Islam, *Jurnal Fakultas Hukum Universitas Malikussaleh*, Vol 7 (2), page. 4

people as husband and wife or in association as husband and wife and in a household is a very personal affair. Basically relatives and the community want the marriage that has been held to last forever, until kaken-kaken, ninen-ninen, meaning husband and wife become legs (grandfather) and the wife becomes (ninik), ie parents who have grandchildren and Twitter. Marriage is one of the most important events in the livelihood of our community, and it is not only an event concerning those concerned (women and men) but also their parents, siblings and family.

The validity of marriage is also often misused by some people who only want to satisfy mere biological needs and certain motives. Marriage problems are a very common problem for the world community, especially the people of Indonesia. Marriage issues in Indonesia have been regulated by the government, namely in Law Number 1 of 1974 concerning Marriage (hereinafter referred to as Marriage Law) and Government Regulation Number 9 of 1975 Regarding Regulations for Implementing Marriage Law, hereinafter referred to as PP Number 9 of 1975<sup>3</sup>. Now the implementation of marriage increasingly diverse forms. Starting from marriages through the Office of Religious Affairs (KUA), marriages carrying away, marriage marriages, contract marriages to hanging marriages (child marriage) that are authorized by the MUI. Judging from the negative effects of child marriage is very much one of thereproductive health especially women and offspring to be born, also violates Law No. 23 of 2002 concerning Child Protection and Law No. 1 of 1974 concerning Marriage.

Child marriage is a social problem that is influenced by tradition and culture in a community group. In human life as social beings can always be connected to various social problems. Social problems are inseparable parts of human life itself because social problems have manifested as a result of human culture itself, as a result of relationships with other human beings and also as a result of their behavior<sup>4</sup>. From a health perspective, women who have sexual relations under the age of 20 years are at risk of developing cervical cancer because the cervical cells have not yet matured. Sexual intercourse during adolescence increases the risk of exposure to Human Papilloma Virus (HPV), the virus that causes cervical cancer. Currently, cervical cancer is ranked first of the cancer that attacks Indonesian women, the incidence is currently 23% among other cancers<sup>5</sup>. Child marriage also stops an adolescent's chance of attaining higher education, so he does not get the opportunity of broader knowledge and insight coupled with the narrowness of finding employment so it is difficult to improve living standards. The phenomenon of underage marriages

3 Abdulkadir Muhammad, *Hukum Perdata Indonesia*, PT. Citra Aditya Bakti, Bandung, 2000, page. 40

4 Ranjabar Jacobus. *Sistem Sosial Budaya Indonesia*. Alfabeta, Bandung, 2013. dalam Rini Meiandayati : *Kejadian Pernikahan Usia Dini Berdasarkan Karakteristik dan Sosial Budaya di Desa Cipacing Kecamatan Jatinangor Kabupaten Sumedang Tahun 2014*, JSK, Volume 1 Nomor. 2 Tahun 2015, page. 81

5 Purwaningsih, E., & Setyaningsih, R. T, Hubungan Pola Asuh Orang Tua Dengan Kejadian Pernikahan Usia Dini Di Desa Jambu Kidul, Ceper, Klaten. *Jurnal Involsi Kebidanan*.Vol. 4.No. 1 Januari 2014 page. 12.

causes controversy in society because of the different points of view<sup>6</sup>.

The basic problem in child marriage is the early age of the married couple. Children under the age of 16 have a marriage, some are directly home, but on the other hand, some are waiting for their age to be mature enough to settle in one house or live together. The phenomenon of child marriage is commonly found in remote areas, such as in one of the Indramayu regions, children who are only recently baliq are married by their parents when the harvest season arrives. This phenomenon has become a normal thing for the people there because it has become a habit that has always been done for generations. The people there who are mostly Muslims do not consider this marriage violating religious law because the conditions of marriage according to religion have been fulfilled.

Indramayu Regency has a tradition related to the lives of adolescent girls, namely the culture of young marriage when adolescents over the age of 20 will be considered old maidens, there is also a "dating market" for young men and women gathering in a place to meet as a social gathering.<sup>18</sup> Studies preliminary conducted by the author in the District of Indramayu District found that the factors affecting the marriage of adolescent girls namely school have not been a priority, the community's perception of the value of young widows is better than old maid (> 20 years), free sex, lack of parental supervision, education parents who are low and pregnant out of wedlock. Data obtained from the head of the Sumur Adem Village Sukra District, Indramayu in 2013 there were 57 couples who married, 12 of them were brides young aged<sup>7</sup>

According to Islamic Law Compilation, marriage aims to realize the life of sakinah, mawaddah, and rahmah. According to Customary Law, marriage can be a matter of relatives, family, fellowship, dignity, can be a personal matter, depending on the order of the community concerned<sup>8</sup> Basically it is a legal relationship that causes legal consequences for those who carry it out. The legal consequence is the arising of rights and obligations for both husband and wife. When a marriage contract occurs, a man who becomes a husband receives various rights in the family, likewise a woman who becomes a wife in a marriage obtains various rights as well. In addition they also assume the obligations as a result of binding themselves in the marriage<sup>9</sup>.

In addition to the two provisions, there are other regulations that are specifically for Muslims, which are contained in the Compilation of Islamic Law (KHI). The compilation of Islamic Law based on Presidential Instruction No. 1 of 1991 is used as a guideline in resolving marital problems, which are the duties and authority of the Religious Courts through legal services and justice in the case process, KHI becomes the material law applicable to the

6 Yekti Satriyandari, Fitria Siswi Utami, Fenomena Pergeseran Budaya dengan Trend Pernikahan Dini di Kabupaten Sleman Di Yogyakarta, *Jurnal Kebidanan*, 8 (2), 2019, page. 107

7 Dian Fitriyani, Kajian Kualitatif Faktor-Faktor yang Mempengaruhi Pernikahan Remaja Perempuan, *IJEMC*, Volume 2 No. 3, September 2015, page.41

8 Imam Sudiyat, *Hukum Adat Sketsa Asas*, Liberty, Jakarta, 2007, page. 107

9 Ramulyo, Moh. Idris, *Hukum perkawinan Islam*, Sinar Grafika Offset, Jakarta, 1999, page. 63

Islamic community in Indonesia.

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In child marriages all the legal consequences described will be difficult to implement. This is because the marriage itself is not legal according to the law, so it has no legal consequences for both parties. Based on the description in the background, in this study the researcher will try to discuss the practice of child marriages that occur in Indramayu District associated with Islamic law and positive law in force in Indonesia and its legal protection for those who commit such marriages. Based on the background that has been described above, the authors limit the problems to be investigated namely what are the obstacles that cause child marriages in Indramayu regency difficult to be eliminated and how to overcome them in terms of legal and non-legal aspects (social and cultural).

Research that has been carried out prior research on early journals in Notary Journal, 4 (1) 2019 with the theme of the Sustainable Development Goals and the Elimination of Child Marriage Practices in Indonesia. This study aims to analyze the implementation of the Sustainable Development Goals Program in eliminating child marriage practices in Indonesia and to find efforts to implement the Government's Sustainable Development Goals Program Official in abolishing child marriage in Pesisir Selatan District, West Sumatra Province.<sup>10</sup> Meanwhile the purpose of this study is to analyze the practice of child marriage that occurs in Indramayu, the reasons for child marriage.

## **B. RESEARCH METHODS**

The method of approach carried out by the author is to use the normative juridical approach. Literature research, which examines anumber of literature relevant to the problem of this writing. Data analysis used in this study is descriptive-qualitative by analyzing data /information obtained through descriptive research with library research which is then systematically compiled and described qualitatively.<sup>11</sup>

## **C. DISCUSSION**

The family is the smallest social unit in society and marriage is the basic institution. The term marriage is a word formed from the basic word of marriage with a prefix and a suffix so that it becomes a marriage word.

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10 Sonny Dewi Judiasih dkk, Sustainable Development Goals and Elimination of Child marriage Practice in Indonesia, *Jurnal Notariil*, 4, (1), 2019

11 Andi Aina Ilmih, A.Zulkarnain, Ideal Electronic Contract Model As A Form Of E-Commerce Dispute Settlement, *Jurnal Pembaharuan Hukum*, Volume VI No.1 Januari-April 2019, Page.77-89

The prefix function mostly shows the meaning of things, affairs so that marriage means marriage affairs, wedding celebrations, and so on. Besides the term marriage, another term that can be found that shows the same meaning is marriage. The basic word of marriage comes from Arabic which is often associated with the word contract which means a promise so that it becomes a marriage contract in the sense of an agreement between a man and woman as husband and wife. The basic word marriage means soul mate so that marriage means marriage between men and women being husband and wife. The word marriage is more general in nature to indicate sex mixing so that marriage can occur outside the law, whereas marriage must be valid according to law<sup>12</sup>.

Wirjono Prodjodikoro<sup>13</sup> said that marriage is living together with a man and a woman who fulfill certain conditions, and if observed closely, marriage is a contract that binds the birth and mind on the basis of faith. Sayuti Thalib<sup>14</sup> regards marriage as a sacred covenant between a man and a woman to form a family, while R. Subekti<sup>15</sup> said that marriage is a legal relationship between a man and a woman for a long time.

Article 1 of the Marriage Law states that:

"Marriage is a spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Godhead of the One".

Indramayu Regency is allegedly the highest area in the case of child marriage in Indonesia. Socio-cultural culture is one of the causes of the high number of cases. Head of the National Family Planning Coordinating Board (BKKBN) Sugiri Syarief said the highest child marriage rates were in the north coast (pantura) areas such as Cirebon; Indramayu; Brebes; and other regencies / cities. "The possibility of Indramayu Regency being the highest area in child marriage cases. In coastal areas, child marriage rates can be 2-3 times higher than inland areas. Social culture plays a major role in influencing the level of child marriage in the pantura area. Many couples who marry under the age of 19 are found. However, such a culture is not beneficial for the couple as a whole. Because, based on the BKKBN program, it is expected that the new marriage age will occur after 21 years.

There are many people who claim to be 16 years old to meet the requirements of the Marriage Law. In fact, maybe their age is still below that. Furthermore, the high cases of child marriage greatly affect the rate of population growth. Every child must have a plan, when they will get married, how many children they will have, when they will stop having children, and what their family will be like. Do not let time to get married, but because of the encouragement of the mother finally a child married too.

In fact, the child himself does not yet have the knowledge of how to educate children. Parents also do not insist if the child is not ready to get

12 Hilman Hadikusuma, *Bahasa Hukum Indonesia*, PT ALUMNI, Bandung, 2010, page.87

13 Wirjono Prodjodikoro, *Hukum Perkawinan di Indonesia*, Sumur, Bandung, 1981, page. 7-8

14 Sayuti Thalib, *Hukum Kekeluargaan di Indonesia*, UI-Press, Jakarta, 1986, page. 47

15 R. Subekti, *Pokok-Pokok Hukum Perdata*, Intermasa, Jakarta, 1985, page. 23

married. Therefore, the BKKBN is aggressively conducting a campaign to minimize the phenomenon of child marriage through the Planning Generation or Genre program. The emphasis of child marriage rates has a significant effect on efforts to reduce the population in Indonesia. The genre campaign will start this year and will be evaluated next year. Child marriages are only marriages that do not meet the administrative requirements of the marriage stipulated by the Marriage Law, but the marriage is a legal marriage. The party who is going to have the marriage does not need to notify the marriage to the registrar of the marriage at the location where the marriage will take place, this means it is contrary to article 3 paragraph (1) PP No. 9 of 1975 which states that:

"Everyone who is going to get married tells their wishes to the registrar at the marriage place".

The Islamic religion does not set clear age limits for marriage, but the Marriage Law provides specific conditions or criteria for the age limit of a person who will carry out a marriage. A marriage is legal according to Islamic law, if it meets all marriage conditions and conditions. Article 14 KHI states that in order to carry out a marriage there must be a prospective husband, prospective wife, marriage guardian, two witnesses and the existence of consent and Kabul. The requirements for the bride and groom are Muslim, male / female, he explained, can give consent and there is no marriage obstacle between the two<sup>16</sup>.

Following below are legal, social and cultural reasons why child marriage is difficult to be abolished in some areas, including as follows:

1. There is a religious view that allows underage marriages

Understanding child marriage according to Islam is a marriage that is done by people who have not been married or have not had the first menstruation for a woman. But some Muslim scholars also allow underage marriages by the proposition to follow the Sunnah of the Prophet because history has recorded that Ayesha was married by the Prophet Muhammad at a very young age while Muhammad was in his 50s at that time. In addition, child marriage is also considered to be able to maintain religious norms, namely to prevent young couples from sex sins due to promiscuity. So some people interpret that the purpose of marriage is to justify biological relations.

In Islam, Christianity and other religions there are no clear restrictions and rules regarding the age of marriage for women or men. There are no clear rules regarding the age limit of a person's marriage. but Islam explains the question of whether or not a woman can marry that is the size of the woman's marriage. One very phenomenal case when some time ago we heard a lot and watched in various media about a man who is also the caregiver of a pesantren, Sheikh Puji alias Pujiono Cahyo Widiyanto, 43, who married a young girl Lutviana Ulfah who was 12 years old. This news is attracting the attention of the public because it is considered an unusual event at this time. This event

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16 Zainnudin Ali, *Hukum Perdata Islam di Indonesia*, Sinar Rafika, Jakarta, 2006, page.12

invited many strong reactions, especially from the National Commission for Child Protection<sup>17</sup>. This marriage does not actually violate the concept of marriage according to Islamic law, because it is considered as a contract / agreement that results in the halal relationship between a woman and a man in accordance with the provisions of syara'<sup>18</sup>

## 2. Aspects of tradition and culture in the local area

Aspects of tradition and culture in the local area also encourage young marriages, by way of an arranged marriage. But certain regions have other reasons, such as in Indramayu, Bali, West Nusa Tenggara, East Nusa Tenggara, young married girls on the initiative of children with parental consent. the impact of young marriages is an increase in domestic violence (domestic violence). The most cases of domestic violence found by this researcher, occurred in Indramayu, Sikka, Lembata, Dompu, and Rembang. "Early married women experience mental health. They often experience stress when the husband has to leave the family and take responsibility for his own household. Young married women are also much isolated from the environment and their peers.

The issue of child marriage becomes very important to note, even there is a village in Indonesia that is very positive response to this child marriage. Because they assume that child marriage is a tradition of ancestors that must be preserved down and down. One of the Districts that makes child marriage as an existence is in the District of Seberang Ulu I, Palembang City. There very many marriages occur at an early age, even it has become a habit of the people there. It is as if the laws that have governed them are ignored without touching the minds of the people. Most of those who get married at an early age are children under 16 years of age, on average they are 13-15 years old<sup>19</sup>.

## 3. Modern communication technologies such as cellular phones help encourage young marriages.

In this globalization era, the development of science and technology is growing rapidly. One of the developments of the science and technology is the emergence of communication tools and social networking. If used improperly, it will have negative consequences for the users. For example wireless communication is increasingly opening the space for social interaction and free expression of individuals. negative effects of such relationships, the sexual behavior of young people who are permissive and carried out before marriage.

The development of technological currents that bring a new culture of culture in a society that is not accompanied by knowledge

17 <https://www.liputan6.com/news/read/167554/pernikahan-dini-syekh-puji> (02/02/2020)

18 Nasution, Rosramadhana. *Ketertindasan Perempuan Dalam Tradisi Kawin Anom: Subaltern Perempuan pada Suku Banjar dalam Perspektif Poskolonial*, Yayasan Pustaka Obor Indonesia, Jakarta, 2016, page. 1

19 Ana Latifatul Muntamah dkk, *Pernikahan Dini di Indonesia :Faktor dan Peran Pemerintah*, *Widya Yuridika Jurnal Hukum*, Volume 2, Nomor 1, Juni 2019, page. 3

and morality makes the culture of globalization give a negative effect among adolescents. Besides that, the internal encouragement of individuals who reasoned that they wanted to channel their dear feelings to the opposite sex made the attitude of wanting to love free and this greatly affected the practice of child marriage in remote areas.

Judging from the Law No. 1 of 1974 concerning marriage gives a less strict and certain meaning other than that the law contradicts Article 26 of Law No. 22 of 2002 concerning Child Protection which requires parents and families to prevent marriages at the age of children. It is expected that with the renewal of the Marriage Law the procedure for submitting a marriage dispensation permit by the Religious Courts and the Office of Religious Affairs regarding marriage applications to be tightened. Not yet reached an agreement between the legal structure and cultural structure in the community, where marriage is often seen as a religious problem that puts trust in marriage about community leaders / scholars. The still low control in the rules and structure of legal and government institutions, makes the problem of child marriage less attention by local stakeholders and the lack of a structured response to prevention causes the problem of child marriage is still often the case.

As for the countermeasures to prevent child marriage is as follows:

1. The Indonesian House of Representatives has ratified the results of a limited revision of Law Number 1 of 1974 concerning Marriage, in a plenary meeting at the Indonesian Parliament Building, Senayan, Jakarta, Monday, September 16, 2019. The revision cancels the minimum age of marriage to now 19 years. Deputy Chair of the Legislation Agency Totok Daryanto said, eight factions in the Indonesian Parliament had reached an agreement with the government to set a minimum age of 19 years. While the PKS Faction and PPP Faction want the age of 18 years<sup>20</sup>. In her report, Minister of Women's Empowerment and Child Protection (PPPA) Yohana Yembise expressed her gratitude to the DPR for this Marriage Bill. Yohana hopes this law creates a golden generation for children in Indonesia. The revision of the Marriage Law is a follow-up to the Constitutional Court's ruling which provides a three-year deadline to the Indonesian Parliament to amend the marriage age provisions stipulated in Article 7 paragraph (1) of the Marriage Law (uu no 1 of 1974)<sup>21</sup>.

Previously the minimum age of marriage stipulated in the law was 16 years for women and 19 years for men. This was sued by NGOs (hereinafter referred to as NGOs) and civil society through judicial review of the law. In its decision, the Constitutional Court agreed to the reasons for the applicants for judicial review and considered the Law on Marriage as contradictory to the 1945 Constitution and the Child

20 <https://www.suara.com/news/2019/09/16/172048/revisi-uu-perkawinan-disahkan-dpr-batas-minimal-umur-menikah-19-tahun> (01/02/2010)

21 *Ibid*



Protection Act. In the Child Protection Act, it is explained that children are those under 18 years of age. The process of the formation of Law No. 16 of 2019 is because there are a number of NGOs that are compiled to respond to the demands of civil society for the Constitutional Court Decision Number 22 / PUU-XV / 2017 concerning the material test of Law Number 1 of 1974 concerning Marriage. Some NGOs participating in participation included the Action Network, the Indonesian Youth Alliance, the 18+ Coalition, the Women's Health Foundation, Sonya Helen Sinombor, the West Java Indonesian Women's Coalition, the Indonesian Disability Women's Association, the Center for Women's Studies and Gender at the University of Indonesia (PKWG UI), Khaerul Umam Noer (PKWG UI), Fatimah Az Zahro (Center for Gender and Sexuality Studies UI), Elvie Permata Sari - SAPA Indonesia, Riska Carolina (PKBI), Aditya Septiansyah (ARI), Zumrotin K (YKP), Rita S Kolibonso (Female Partner)<sup>22</sup>.

At least, there are two main considerations of the Constitutional Court: setting the marriage age limit of 19 years for the bride and 16 years for the bride declared contrary to the spirit of protection of children who put the age limit of children is 18 years and the provisions violate the principle of equality before the law in accordance with Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In reality, the number of Indonesian child marriages is relatively high, which is about 1 in 9 girls married under the age of 18 or about 375 girls married every day. The impact of child marriages varies greatly, namely for children who are married to lose their rights to growth and development, the right to education is not fulfilled, and the vulnerability of experiencing sexual violence. Another impact, child pregnancy contributes to the high mortality rate of mothers giving birth. In Indonesia there are many births of malnourished babies and stunted children<sup>23</sup>. Central Statistics Agency (BPS) released the percentage of child marriages in the country increased to 15.66% in 2018, compared to the previous year 14.18%. The increase in the percentage of child marriages is a separate note for the government that is constantly trying to improve the Human Development Index.

2. The role and role of youth, community leaders or scholars and the government in providing socialization of the anti-marriage movement and the negative consequences of respected community leaders to the society, both parents and adolescents. Overcoming child marriage by means of socialization to the community through community activities such as the anniversary of the Prophet's birth, mutual cooperation, posyandu and others, at the time of speech, the village head by motivating parents to continue to the children to continue Education to a higher level, a minimum of high school / MA graduates, so that

<sup>22</sup><http://icjr.or.id/data/wp-content/uploads/2019/07/NA-RUU-Perubahan-UU-Perkawinan-Koalisi-Masyarakat-Sipil-11072019.pdf> (01/02/20)

<sup>23</sup><http://icjr.or.id/data/wp-content/uploads/2019/07/NA-RUU-Perubahan-UU-Perkawinan-Koalisi-Masyarakat-Sipil-11072019.pdf> (03/02/2020)

children who intend to get married are old enough and in accordance with the provisions in the Marriage Law, so that they are free from violations of the law<sup>24</sup>.

3. The Indonesian Women's Coalition has committed to prevent child marriage. The commitment was made in a network with various other parties, especially the Office of Education and the Office of Women's Empowerment and Child Protection. The commitment will be followed up by continuing to intensify socialization activities in all regions in Indramayu Regency. They also took the village government together to stop the practice of child marriage. The role of the village government is very important to prevent child marriage. For example, in the Village of Krasak Indramayu, the head of his village has now made a circular to prevent child marriages and require children to attend 12-year compulsory education. In addition, in Jatisawit Indramayu Village, the village government has also conducted a socialization program to prevent child marriages using the village budget (ADD). The village government can access ADD for the prevention of child marriage.

#### **D. CONCLUSION**

The purpose of this study is to analyze the practice of child marriage that occurs in Indramayu, there are: The existence of religious views that allow underage marriage, There are differences in legal perspectives between traditional and contemporary fiqh, aspects of tradition and culture in the local area, modern communication technologies such as cellular phones are encouraging young marriages.

The implication of this research is to socialize Law Number 16 Year 2019 regarding marriages regarding the marriage age limit up to 18 years for men and women as well as government cooperation with community leaders, religious leaders and the Indonesian Women's Coalition to eradicate child marriage in various regions.

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<sup>24</sup>Ana Latifatul Muntamah dkk, *Op.cit*,p.8.

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